IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.243 OF 2005.

Gous Amir Jamadar, (since deceased)
through legal heirs
Nijumbee Gavas Jamadar & Others ..Appellants

versus

Bavaruddin Gavas Jamadar ..Respondent.

Mr. Amit B. Borkar for the Appellant

Coram : S.R.Sathe, J.
Dated : 18th December, 2006

P.C.

1. Heard learned advocate for the appellant. From the perusal of the record and the submissions made before me it is very clear that the suit for specific performance of an agreement to reconveyance dated 22.3.1966 was filed by the plaintiff, in the year 1985. The learned trial Judge framed necessary issues including the issue as to whether the suit is in time and whether the plaintiff is entitled for specific performance of the agreement to reconveyance. After considering the evidence of both the parties, the learned trial Judge has dismissed the said suit. The said finding is confirmed by the First Appellate Court. Being aggrieved, the original plaintiff has filed the present Second Appeal.

2. The learned Advocate for the appellant tried to argue before me that usually in case of an agreement to reconveyance or agreement to sale, time is not the essence of the contract, unless it is specifically made so in the agreement. While, in the instant case, there is no specific agreement and as such the suit cannot be dismissed on the ground that the suit is filed 19 years after the execution of the agreement to reconveyance. During the course of argument, he submitted that he had in fact filed a suit on the basis of the said agreement presuming that he had remedy for redumption and accordingly he filed the said suit, but the same was also dismissed right upto High Court and as such he filed the present suit. It is needless to say that plaintiff could have claimed alternate remedy of specific performance at that time, but he did not do so. Considering all these aspects, there is no error of law in the finding recorded by the courts below. There is no substantial question of law involved in the matter. Appeal is dismissed in limine.

(S.R.Sathe, J.)